

REMARKS

Claims 1-21 are pending in the instant application. Claims 1-21 have been rejected by the Examiner. No claims have been amended in response to this Office Action. The Applicants submit that claims 1-21 are in condition for allowance and respectfully request reconsideration and withdrawal of the outstanding rejections. No new matter has been entered.

Claim Rejections Under 35 USC §103

Claims 1-21 have been rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over U.S. Patent No. 7,370,364, to Dobbins et al. (hereinafter “Dobbins”).

A claimed invention is unpatentable if the differences between it and the prior art are “such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.” 35 U.S.C. 103(a)(2000); *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1729-30 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966). In *Graham*, the Court held that the obviousness analysis is based upon several basic factual inquiries: “[1] the scope and content of the prior art are to be determined; [(2)] differences between the prior art and the claims at issue are to be ascertained; and [(3)] the level of ordinary skill in the pertinent art resolved.” 283 U.S. at 17. See also *KSR Int’l v. Teleflex Inc.*, 127 S.Ct at 1734. The Applicants traverse the outstanding rejections of claims 1-21 under 35 U.S.C. 103(a) for at least the reasons presented herein.

Independent claim 1 recites, *inter alia*, “system for governing management of object persistence in a hosting environment, comprising:

...a plurality of access intent policies ...defining rules operable for specifying data access and data consistency semantics compatible with variant target back end systems...

wherein said access intent policies include attributes comprising:

access type attributes;
ReadAhead attributes;
collection access attributes; and
pessimisticUpdateHint attributes.”

Claims 2-13 variably depend from independent claim. Of these, claims 3-11 provide features that further define the “attributes” recited in claim 1. In particular, claims 2-3 further

define the “access type attributes,” claim 5 further defines the “readAhead attributes,” claims 6-8 further define the “collection access attributes,” and claims 9-11 further define the “pessimisticUpdateHint attributes.”

In the Office Action, the Examiner rejects independent claim 1 as being unpatentable over Dobbins. The Examiner concedes on page 3 of the Office Action that Dobbins fails to disclose “a plurality of access intent policies ...defining rules operable for specifying data access and data consistency semantics compatible with variant target back end systems... wherein said access intent policies include attributes comprising:

access type attributes;
ReadAhead attributes;
collection access attributes; and
pessimisticUpdateHint attributes,” as recited in Applicants’ claim 1.

However, the Examiner states that a person of ordinary skill in the art would have known how to include access type attributes, citing U.S. 2004/0128328 to Leff et al. (hereinafter “Leff”) in support. If the Examiner is relying upon Leff to ascertain the knowledge of one of ordinary skill in the art, then this reliance is in error. Leff discloses optimistic and pessimistic concurrency controls that assume a frequency occurrence of conflicts (rare v. common) (paragraphs [0048] and [0049]). The Examiner then extends a broad sweep over the Leff reference in his assertion that it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate *each and every attribute recited in claim 1* into the system disclosed by Dobbins, simply because Leff allegedly discloses optimistic and pessimistic concurrency controls. Both Dobbins and Leff fail to disclose the access intent policies including access type attributes, readAhead attributes collection access attributes, and pessimisticUpdateHint attributes, as recited in claim 1. As neither Dobbins nor Leff teaches or suggests the recited access intent policies including the listed attributes of claim 1, claim 1 should be patentable over Dobbins. As indicated above, claims 3-11, which variously depend from claim 1, further define the nature of the “attributes.” The Examiner does not cite any references in support of the rejections of claims 2-6, 10, and 11, other than an Official Notice-type rejection in view of Dobbins. However, if Dobbins fails to disclose the “attributes” recited in claim 1, then it logically follows that Dobbins would not disclose the refined features of these “attributes” as presented in claims 2-6, 10, and 11. As Leff

fails to disclose any of the “attributes” recited in claim 1, it logically follows that the refined features of the “attributes” recited in dependent claims 2-6, 10, and 11 should be patentable over Dobbins and Leff. Finally, with respect to claims 2-6 and 10-13, the Applicants submit that the Examiner’s use of Official Notice in this circumstance is improper. MPEP § 2144.03 defines when it is proper to use Official Notice. In particular, the MPEP states “Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.” The MPEP also states “It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” The MPEP gives as an example specific knowledge of the art. In this case, the refined features of the “attributes” recited in claims 2-6, 10, and 11, as well as features recited in claims 12 and 13, are not capable of instant and unquestionable demonstration as being well-known. Applicants assert that it is improper to rely on Official Notice for the features recited in claims 2-6 and 10-13. Accordingly, the Applicants submit that claim 1 is patentable over Dobbins and is in condition for allowance. Claims 2-13 depend from what should be an allowable base claims. For at least this reason, the Applicants submit that claims 2-13 are also in condition for allowance.

Independent claims 14 and 18 recite substantially similar subject matter as that recited in claim 1. For at least the reasons advanced above with respect to claim 1, the Applicants submit that claims 14 and 18 are patentable over Dobbins and are in condition for allowance. Claims 15-17 and 19-21 depend from claims 14 and 18, respectively, and are believed to be in condition for allowance at least for the reason that they depend from what should be allowable base claims. Reconsideration and withdrawal of the rejections of claims 1-21 is respectfully requested.

CONCLUSION

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicant. Accordingly, reconsideration and allowance is requested. It is submitted that the foregoing amendments and remarks should render the case in condition for allowance.

Accordingly, as the cited references neither anticipate nor render obvious that which the Applicants deem to be the invention, it is respectfully requested that claims 1-21 be passed to issue.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 09-0463.

Respectfully submitted,

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Date: December 3, 2008

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